

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AEDES DE VENUSTAS, INC.,

Plaintiff,

vs.

VENUSTAS INTERNATIONAL, LLC,

Defendant.

07 Civ. 4530 (LTS) (THK)

Document Electronically Filed

JOSEPH M. HEPPT, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I represent the plaintiff, Aedes De Venustas, Inc., in the above captioned matter and I submit this declaration in opposition to Defendant's motion for partial summary judgment.

2. On or about June 2, 2008, I spoke with Kristen McCallion, one of Defendant's new counsel in this matter, by telephone. I told her that, in my view, the motion for partial summary judgment should be withdrawn on the grounds that (a) in light of the Court's ruling on the motion for a protective order, the Court's prior ruling on "good faith" as part of the *Polaroid* factors could not be relied upon to establish good faith for purposes of the damages phase; and (b) while the Defendant contests Mr. Silk's sworn testimony, that testimony at the very least presents a credibility issue and a question of material fact that would preclude summary judgment in favor of the Defendant. Defendant's counsel disagreed and chose to pursue the motion.

3. Annexed hereto as Exhibit A is a true and correct copy of the deposition transcript of Allen Silk, dated March 20, 2008.

4. Annexed hereto as Exhibit B is a true and correct copy of the estimate for trademark work prepared by Mr. Silk's paralegal and that was marked as Exhibit 3 at his deposition.

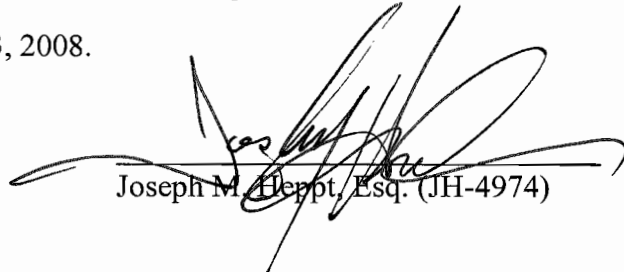
5. Annexed hereto as Exhibit C is a true and correct copy of the invoiced from Mr. Silk's firm dated April 19, 2006 and marked as Exhibit 5 at his deposition.

6. Annexed hereto as Exhibit D is a true and correct copy of the relevant excerpts of the deposition transcript of Sam Ghusson, dated June 12, 2007.

7. Annexed hereto as Exhibit E is a true and correct copy of a cease and desist letter that I wrote to the Defendant dated April 16, 2007.

8. Annexed hereto as Exhibit F is a true and correct copy of the relevant excerpts from the Transcript of Trial Record, Aedes De Venustas, Inc. v. Venustas International, LLC, dated July 13, 2007.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on June 13, 2008.



Joseph M. Heppert, Esq. (JH-4974)

EXHIBIT A
TO THE DECLARATION
OF JOSEPH M. HEPPT

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 CIVIL ACTION NO. 1:07-04530 (LTS)

4 AEDES DE VENUSTAS, INC.,
5 Plaintiff,

6 -vs-

7 VENUSTAS INTERNATIONAL, LLC,
8 Defendant.

9 CIVIL ACTION
10 DEPOSITION OF:
11 ALLEN M. SILK

12 T R A N S C R I P T of stenographic notes of
13 the proceedings in the above entitled matter, as taken
14 before KAREN M. AHERN, a Notary Public and Certified
15 Court Reporter of New Jersey, License No. XIOI061, at
16 the office of Stark & Stark, Lenox Drive, Lawrenceville,
17 New Jersey, on Thursday, March 20, 2008, commencing at
18 2:45 P.M.

19
20 - - - - -

21 R.J. CAGGIANO & ASSOCIATES
22 Certified Court Reporters
23 2517 Highway 35 - Building G
24 Post Office Box 106
25 Manasquan, New Jersey 08736
732-223-7200

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A P P E A R A N C E S:

JOSEPH M. HEPPT, ESQ.
Attorney for Plaintiff.

MATHEWS, SHEPHERD, MC KAY & BRUNEAU, P.A.
BY: ROBERT G. SHEPHERD, ESQ.
Attorneys for Defendant.

REILLY, SUPPLE & WISCHUSEN, L.L.C.
BY: ROBERT J. REILLY, III, ESQ.
Attorneys for Allen M. Silk.

Also Present:
Sam Ghusson

EXHIBITS

No.	Description	Page
Silk-1 for id.	Subpoena.	5
Silk-2 for id.	Time records dated 4/17/06.	5
Silk-3 for id.	E-mail dated 3/17/06 with attachment.	5
Silk-4 for id.	Document entitled "New Jersey State Business Gateway Search".	5
Silk-5 for id.	Time record.	5
Silk-6 for id.	E-mail dated 3/17/06.	15
Silk-7 for id.	E-mail dated 2/6/06.	15
Silk-8 for id.	E-mail dated 2/6/06.	15
Silk-9 for id.	E-mail dated 2/15/06.	47
Silk-IO for id.	E-mail dated 2/15/06 with attachments.	47
Silk-II for id.	Document entitled "New Jersey LLC Formation Checklist".	5
Silk-12 for id.	Letter dated 12/30/05 with attachment.	57
Silk-13 for id.	Time record.	61
Silk-14 for id.	E-mail dated 2/3/06.	63
Silk-IS for id.	Time records.	73
Silk-I6 for id.	Typed page of a taped conversation.	75

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Witness

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Allen M. Silk				
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(Subpoena was marked Silk-1 for identification.)
(Time records dated April 17th, 2006 were marked Silk-2 for identification.)
(E-mail dated March 17th, 2006 with attachment was marked Silk-3 for identification.)
(Document entitled "New Jersey Business Gateway Search" was marked Silk-4 for identification.)
(Time record was marked Silk-5 for identification.)

A L L E N M. S I L K,

first being duly sworn, testifies as follows:

D I R E C T E X A M I N A T I O N

B Y M R. H E P P T:

Q Good afternoon, Mr. Silk. We just met a moment ago, but let me introduce myself on the record. My name is Joseph Heppt. I represent the plaintiff in the litigation that's captioned Aedes DeVenustas, Inc. versus Venustas International, LLC which is currently pending in the United States District Court for the Southern District of New York, and I'm here to take your deposition this afternoon. Have you ever been deposed

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before?

2 A Yes.

3 Q So you know the drill. I'm going to ask
4 you a series of questions and you're going to answer
5 those questions to the best of your ability. That's
6 fine with you?

7 A That's fine with me.

8 Q Okay. If at any point you don't
9 understand a question that I ask you, please let me know
10 because it's very important that we understand each
11 other. Is that okay?

12 A Yes.

13 Q And if you need to take a break at any
14 point, just let me know. Obviously, we'll be happy to
15 accommodate.

16 A Yes.

17 Q Great.

18 Let me hand you what's been marked as Silk
19 Exhibit number 1 for identification. Have you seen that
20 document before today?

21 A Yes.

22 Q And can you tell us what that is?

23 A It's a subpoena for me to appear in I believe
24 your office.

25 Q We're here today for the deposition that

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1 the subpoena called for?

2 A Yes.

3 Q You turn to the last page of that exhibit
4 which is titled "Schedule A," and what steps have you
5 taken if any to locate the documents that are called for
6 in that schedule?

7 A I have a -- I believe reviewed the file that we
8 had bated stamped. There were a number of provisions in
9 there that deals with the time frame in 2006, around
10 this time of the year.

11 Q And did you segregate those documents that
12 fall within that time frame?

13 MR. REILLY: Counsel, I had faxed to you
14 what I had thought were the relevant documents.

15 If you want to put that in front of Mr. Silk,
16 that's what we discussed.

17 BY MR. HEPPT:

18 Q Are you aware, Mr. Reilly, your counsel,
19 today faxed certain documents to me?

20 A Yes.

21 Q And did you review those documents before
22 they were faxed?

23 A I took a look at them probably twice, once
24 before and once after.

25 Q Okay. And in your opinion, were those the

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1 documents that were relevant to the subpoena?

2 A Yes.

3 Q Were there any other documents in the file
4 that you're aware of that were relevant to the subpoena
5 that were not faxed to me?

6 MR. REILLY: Object to the form of the
7 question because depending on what questions
8 you ask, what Attorney Shepherd asks, there may
9 be some additional ancillary documents. I
10 don't want to represent to you that I gave you
11 everything that may be involved, but it
12 certainly is what I thought were the critical
13 documents that were warranted.

14 MR. HEPPT: Okay. I'm asking the witness
15 because we have a subpoena and your testimony
16 was subpoenaed as well as documents.

17 MR. REILLY: Okay.

18 MR. HEPPT: I want to make sure I got all
19 of the responsive documents.

20 MR. REILLY: The entire file is here in
21 front of you. As we discussed off the record,
22 there's an attorney-client privilege. The
23 issue is what was waived and what Counsel wants
24 to be produced. If you take what I sent to
25 you, have it marked, you can start to ask

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1 Mr. Silk questions, and you'll find that if
2 there is anything that is before or after those
3 documents.

4 MR. HEPPT: Okay. I'm just trying to do
5 this in the most efficient way. We'll proceed
6 on that basis.

7 MR. REILLY: I'll represent to you if you
8 have those marked and start to ask him, there
9 may be something that may be before or after.
10 I don't think it's directed to your issue, but
11 we can find that out.

12 MR. HEPPT: Okay.

13 MR. REILLY: Because Mr. Silk and I have
14 to be careful as to what we answer and give you
15 because Counsel sitting here with the client
16 there's an attorney-client issue there. We're
17 not going cart-blanc.

18 MR. HEPPT: I don't want to take too much
19 of the record, but the schedule that's attached
20 to the subpoena was carefully drafted, and it's
21 limited in scope, and I believe it falls within
22 the waiver of the privilege, but, you know,
23 we'll proceed. If there are other documents I
24 think that may be -- that may exist in the file
25 that I want produced, I'll make the request on

3 (Pages 6 to 9)

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1 the record.

2 BY MR. HEPPT:

3 Q Okay. Mr. Silk, did there come a time
4 when you were retained, you or your firm was retained to
5 -- in connection -- let me start that -- strike that.
6 Try that one again.

7 Did there come a time when you or your
8 firm was retained to provide services in connection with
9 a company that was being formed that eventually became
10 known as Venustas International, LLC?

11 A Yes.

12 Q Okay. When was that?

13 A Probably February of 2006, somewhere around
14 there.

15 Q Okay. And who retained you?

16 A We sent out an engagement letter that I believe
17 was signed by both Mr. Ghussou and Mrs. Bums.

18 Q Okay. And in connection with the services
19 that were rendered pursuant to that engagement letter,
20 was there one or the other that you dealt with more
21 frequently, Mr. Ghussou or Miss Bums?

22 A Generally Mr. Ghussou.

23 Q Did you ever discuss the services that you
24 were providing pursuant to that engagement letter with
25 Miss Bums?

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1 A I don't believe so.

2 Q So, is it fair to say your sole contact
3 with the client was Mr. Ghussou?

4 A I never met Mrs. Bums, but I've been on at
5 least one conference call with her.

6 Q Okay. Was that conference call to discuss
7 the name of the company?

8 A No.

9 Q Okay. Can you describe to me what exactly
10 you or your firm was retained to do?

11 A We were retained to form a limited liability
12 company in New Jersey.

13 Q And can you describe for me what that
14 entailed in terms of the services you provided?

15 A We discussed with the clients various names that
16 they may want to use. I believe they gave us three.
17 One of our paralegals, Myra Gibson, searched those for
18 purposes of filing a New Jersey limited liability
19 company. I believe at the time two of them were valid
20 one of them wasn't. We formed an entity called -- I
21 believe we used the initials of Robin Bums and Sam
22 Ghussou. I think it was RBSG, LLC, and at a later date
23 we changed that name to Venustas International, LLC.

24 Q Now, do you remember the three names that
25 they gave you?

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1 A One was called Pulse, one was the initials I
2 just gave you, and the other one was Venustas
3 International.

4 Q And I think you indicated a minute ago
5 that two were not valid. Can you explain?

6 A No. Pulse I think was not available in New
7 Jersey to file that as an LLC.

8 Q Okay. So, the two were valid, but one was
9 not?

10 A Yes.

11 Q That one being The Pulse?

12 A Yes.

13 Q Okay. And when you say valid, I think I
14 take it from your testimony that name had been taken
15 already in New Jersey?

16 A Yes. I assume that which my secretary -- well,
17 my paralegal had done the search in New Jersey that she
18 didn't believe we could file under that name.

19 Q Okay. And was that fact communicated to
20 the client?

21 A Yes.

22 Q And how was that communicated to the
23 client?

24 A I think Mrs. Gibson had told that to either one
25 or both of the clients.

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1 Q Mrs. Gibson is the paralegal?

2 A Yes, Myra Gibson.

3 Q How did she tell them? Was it verbally or
4 in writing?

5 A I don't know if it was by E-mail or by
6 telephone.

7 Q Did the client -- at the time that the
8 client retained you to form the LLC in New Jersey, were
9 you also retained to clear any names with respect to
10 trademark usage?

11 A No.

12 Q Okay. I think you testified a minute ago
13 that once it became apparent that The Pulse was not
14 available, you chose to use or -- not you chose the
15 name. RBSG was used --

16 A Yes.

17 Q -- for the formation of the entity?

18 A Yes.

19 Q And, obviously, there came a point in time
20 when that name was changed to the third name, the
21 Venustas International, LLC; correct?

22 A Yes.

23 Q When was that?

24 A Again, it was probably around this time in 2006.

25 Q Which time? I mean--

Direct - Silk

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1 A March --
2 Q Okay.
3 A -- 20th, 19th, 22nd. I don't remember.
4 Q Sometime in mid March?
5 A Yes.
6 Q Mid to late March 2006?
7 A Yes.
8 Q Who made the decision to change the name
9 to Venustas International?
10 A The clients.
11 Q And how is that communicated to you?
12 A I don't know if it was by E-mail or telephone.
13 Q Who communicated that to you?
14 A I would think it was Mr. Ghussou, but I don't
15 recall.
16 MR. HEPPT: To the extent that there's an
17 E-mail that's -- that is, you know,
18 communicating the decision to change the name,
19 I'd call for its production.
20 MR. REILLY: Okay.
21 BY MR. HEPPT:
22 Q When the client instructed you to change
23 the name to Venustas International, what did you have to
24 do to do that?
25 A Myra Gibson prepared an amendment to the

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1 Certificate of -- Certificate of Formation to change the
2 name in New Jersey.
3 Q Had the name already been cleared for use?
4 A Only for New Jersey purposes.
5 Q But prior to this date, the name had been
6 cleared for use in New Jersey?
7 A It had been cleared prior. I think she checked
8 again to see if it was available. It was available for
9 New Jersey purposes.
10 Q Okay.
11 MR. REILLY: Off the record.
12 (Whereupon a discussion was held off the
13 record.)
14 (E-mailed dated March 17th, 2006 was marked
15 Silk-6 for identification.)
16 (E-mail dated February 6th, 2006 was marked
17 Silk-7 for identification.)
18 (E-mail dated February 6th, 2006 was marked
19 Silk-8 for identification.)
20 BY MR. HEPPT:
21 Q Mr. Silk, let me hand you what's been
22 marked as Silk Exhibit number 6 which is -- why don't
23 you tell me what it is.
24 A It's an E-mail from Sam Ghussou to myself dated
25 March 17th, 2006 at three twenty-nine P.M.

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1 MR. SHEPHERD: What number is that?
2 MR. HEPPT: The bates number is 53.
3 BY MR. HEPPT:
4 Q In the body of the E-mail it says, I'll
5 quote, "Robin and I finally agreed on a name for our
6 company. So, go ahead and register it. Venustas
7 International". Do you see that?
8 A Yes.
9 Q Did I read that correctly?
10 A Yes.
11 Q Was this the first time that Mr. Ghussou
12 had communicated to you that they had decided to use the
13 name Venustas International?
14 A I believe so.
15 Q And when he said go ahead and register it,
16 did you have an understanding as to what he meant?
17 A Yes.
18 Q What was that?
19 A To file that change of the amendment of
20 Certificate of Formation in New Jersey.
21 Q Okay.
22 MR. SHEPHERD: What exhibit is that? I'm
23 sorry.
24 MR. HEPPT: It's six.
25 BY MR. HEPPT:

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1 Q Had you communicated to Mr. Ghussou prior
2 to March 17th, 2006 that the name Venustas International
3 was available for use?
4 A I think Myra Gibson had.
5 Q And then further on in the E-mail he says,
6 I'll quote, "Thank you and I look forward to see you or
7 talk with you early in the week to follow up on the
8 voice message that I left for you earlier today". Do
9 you see that?
10 A Yes.
11 Q I read that correctly?
12 A Yes.
13 Q Did that have anything -- that voice
14 message have anything to do with the change or the
15 election of the name of the company?
16 A I don't remember.
17 Q Okay. Let me hand you what's been marked
18 as Silk Exhibit 7 which appears to be an E-mail from
19 yourself to Myra Gibson dated February 6th, 2006, and
20 the subject line is "Venustas is a possible name for the
21 entity". I'm sorry. The bates number -- I didn't put
22 the bates number on the record.
23 MR. REILLY: Number his number nine.
24 bates number is number nine.
25 MR. HEPPT: Thank you.

5 (Pages 14 to 17)

1 BY MR. HEPPT:

2 Q Is that an E-mail that you sent to
3 Miss Gibson?

4 A Yes.

5 Q And you're asking her to check this name
6 in New Jersey. Do you see that?

7 A Yes.

8 Q What did you mean when you wrote that?

9 A To see if it was available for the formation of
10 an LLC in New Jersey.

11 Q Okay. Had you discussed with Mr. Ghussan
12 and Miss Bums prior to that date, February 6th, whether
13 the name should be cleared in terms of trademark usage?

14 A I believe there were two times I discussed this
15 with Mr. Ghussan. I never had this discussion with
16 Mrs. Bums.

17 Q Okay. When was the first discussion that
18 you had with Mr. Ghussan on that subject?

19 A When we form an entity with a client, we discuss
20 with them the fact that clearing the name in New Jersey
21 just gives you the ability to form the entity. It would
22 be wise to move forward and do a -- probably a knock-out
23 search and then a full search for trademark work, and
24 then if necessary move ahead and actually get a
25 trademark or service mark depending upon the entity,

1 Q Do you recall what Mr. Ghussan's reaction
2 was?

3 A We're just forming an entity. We don't know
4 what we're going to do with it yet. Let's just wait and
5 see.

6 Q Now, you mentioned a second discussion or
7 second time where you discussed the trademark search
8 with Mr. Ghussan; is that correct?

9 A Yes.

10 Q And do you recall when that occurred?

11 A Yes.

12 Q When was that?

13 A After this information was given to me by Myra
14 Gibson.

15 Q Okay. We're going to get to that in a
16 second. I'm trying to do this in a logical way. We're
17 jumping around a little bit, partially my fault here.

18 Let me hand you what's been marked as Silk
19 Exhibit 8 which appears to be an E-mail from Myra Gibs on
20 to yourself dated February 6th. The subject is
21 "Venustas is a possible name for the entity". The bates
22 number is 10. Do you recall receiving that E-mail from
23 Miss Gibson?

24 A Yes. I've gone over the file. I've seen this
25 before. I do recall getting this from her.

that what we talk to our client about, if they're
certainly going to use this in a national setting or
regional setting that's what we I believe --

Q I'm sorry to interrupt.

A I believe Sam and I had that discussion probably
early on, and then we had a second time. The second
time was when Myra Gibson had given to me a breakdown,
certain information which is the cost of running this
search.

Q We're going to get to that document in a
second. I had that premarked. But let me ask you
before we do that in terms of the first discussion which
you say it was early on, was this prior to the formation
of the entity?

A Probably about the time when someone comes to me
that's the discussion I have with people when we're
forming an entity.

Q Okay. And do you recall having that
discussion with Mr. Ghussan?

A I don't recall the exact time of having an
initial discussion.

Q Do you recall discuss -- having --
discussing that topic with Mr. Ghussan early on?

A I have it with any of our clients in a situation
like this.

1 Q And in that E-mail Miss Gibson is
2 informing you that the name Venustas International was
3 available for use in New Jersey; is that correct?

4 A Yes.

5 Q That has nothing to do with clearing the
6 name for trademark usage; correct?

7 A Yes.

8 MR. SHEPHERD: What's that exhibit number?

9 MR. HEPPT: The exhibit number is eight.

10 THE WITNESS: Eight.

11 MR. SHEPHERD: This is the one which
12 starts Allen, the name Venustas International
13 is available?

14 MR. HEPPT: Yeah.

15 BY MR. HEPPT:

16 Q After you got that E-mail from
17 Miss Gibson, did you communicate to Mr. Ghussan the fac
18 that the name was available in New Jersey?

19 A I'm sure either I did or Myra did. I'm not sure
20 who did it.

21 Q And I take it from your prior testimony
22 that someone at your firm went ahead to amend the
23 certificate to use the name?

24 A Myra Gibson did.

25 MR. REILLY: Just note my objection to the

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line of questioning since the E-mail is
February 6th and the amendment wasn't to like
March 21 st. Your line of questioning made it
sound like one happened right after the other.
MR. HEPPT: Fair enough. Fair.
BY MR. HEPPT:
Q Mr. Silk, let me hand you what's been
marked as Silk Exhibit 3. Have you seen that documen
before today?
A Yes.
Q The document bears the bates numbers 54 on
the first page and 55 on the second page; is that
correct?
A Yes.
Q Okay. What is this document?
A Well, this is what I probably asked Myra to
obtain for me which is a breakdown of the approximate
costs of doing the searches and doing the trademark
work.
Q And why did you ask her to prepare that?
A Because we thought it was time for them to
seriously think about doing this.
Q Them being?
A The client.
Q And you thought it was time for the client

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to run the trademark search?
A Yes.
Q And was this before or after the
certificate, the LLC certificate had been amended?
A I think it was at the time -- when did I have
the discussion?
Q Well, actually when this E-mail --
A This is before the filing I think of the change
of the name in New Jersey.
Q In the E-mail, Miss Gibson says that she's
attaching a quote for trademark work based on her rate
-- I'm paraphrasing. Based on her rate and Rachel's
rates. You see that? Who's Rachel?
A Rachel Stark is a partner here who does the
trademark work.
Q Did you modify the quote in any way to
include your time or the projection of your costs?
A No.
Q Okay. What did you do with the quote if
anything?
A I believe I discussed it with Sam, gave him the
approximations of the amounts.
Q Do you recall whether that discussion was
over the phone or face-to-face?
A I believe it was on the -- a telephone

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1 conference when we discussed the admendment of the
2 Certificate of Formation.
3 Q Who was participating in that phone call?
4 A At least me and Sam and it could have been Myra
5 I'm not sure.
6 Q Tell me everything you remember about that
7 conversation, what you said, what Mr. Ghusson said.
8 A I probably gave him a range of numbers, two
9 numbers we have here. It could probably be higher, an
10 he said he'd get back to me as to whether or not we
11 should perform the services.
12 Q The two numbers are the --
13 A Range of the -- probably say 3,000 to \$4,000.
14 I'm not sure.
15 Q Okay. The quote that's attached to Silk
16 Exhibit 3 -- is it? What number is that?
17 MR. SHEPHERD: Three.
18 MR. HEPPT: I should write them on my
19 copies so I know.
20 BY MR. HEPPT:
21 Q The quote that's part of Exhibit 3 has two
22 numbers at the bottom of the second page. One is
23 \$2,913, the other is \$3,413. Do you see that?
24 A Yes.
25 Q Are those the numbers that you're

Page 25

1 referring to?
2 A Yes.
3 Q And Mr. Ghusson told you after some
4 discussion -- well, strike that.
5 During that conference call with
6 Mr. Ghusson, did you discuss the need or the
7 advisability of doing a trademark search with
8 Mr. Ghusson?
9 A This was just a continuation of our prior
10 discussion.
11 Q In the prior discussion, you had discussed
12 the advisability of doing such a search with the client;
13 correct?
14 A Yes.
15 Q And you indicated a minute ago that
16 Mr. Ghusson told you he would get back to you in term
17 of authorizing you whether or not to do the work?
18 A Yes. I mean we were spending more than double
19 what we spent to form it. They were still in the
20 initial stages of what they were doing here. We were
21 negotiating a buy-sell agreement. We didn't have a dea
22 done there. He said he would get back to me.
23 Q Did he ever get back to you?
24 A No.
25 Q Did you ever receive any authorization

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from the client to do the trademark clearing work?

2 A No.

3 Q Let me hand you what's been marked as Silk
4 Exhibit 2 which appears to be -- well, it's a two-page
5 document bearing the bates numbers 1214 and 1215, and rry
6 first question, Mr. Silk, will be to have you identify
7 what that document is.

8 A We keep time on even our fixed fee matters
9 internally. So, this was an internal time.

10 Q Okay. And is this document the printout
11 from a computer program that you maintain at the firm?

12 A Yes.

13 MR. SHEPHERD: What's the exhibit number
14 again?

15 MR. HEPPT: Two.

16 BY MR. HEPPT:

17 Q And the entries that we see on the
18 document in the far left corner, there's a column that's
19 headed "atty" which I take to mean attorney?

20 A Yes.

21 Q And there are various initials below that?

22 A Yes.

23 Q The first one is SLK. Who is that?

24 A Me.

25 Q So, these are not initials? These are

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1 Mr. Ghusson and Miss Bums to form an LLC in New Jersey
2 correct?

3 A Yes.

4 Q And we've also had testimony that LLC went
5 through various names; correct?

6 A Yep.

7 Q Does this document reflect all of the work
8 that your firm did in connection with the formation of
9 that company and those name changes?

10 A Probably not.

11 Q What is the -- is there a procedure in
12 place at the firm for entering time?

13 A Yes.

14 Q And what is that procedure?

15 A Each of us on our computer has a time entry
16 system that we use.

17 Q And is there any guideline that the firm
18 has with respect to attorneys or paralegals entering
19 their time?

20 A Yes.

21 Q And what is that?

22 A You're supposed to put in all of your time.

23 Q But you don't think that was done in this
24 case?

25 MR. REILLY: Object to the foml of the

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1 abbreviation of the last name?

2 A One of my partners who's older then I am has m
3 initials.

4 Q Thank you.

5 The other initials that appear in this
6 page are in fact -- or the other entries in that column
7 are in fact initials?

8 A Yes.

9 Q So, for example, the one below on the
10 second entry is MCG. Do you know who that is?

11 A Myra C. Gibson.

12 Q Does this document reflect all of the work
13 that was done by your firm in connection with the
14 formation of the LLC?

15 MR. REILLY: Hold on a second. Read back
16 the question.

17 (Whereupon the requested portion was read
18 back.)

19 MR. REILLY: Object to the form of the
20 question. You're not indicating which LLC, and
21 because we've already established there was
22 more than one --

23 MR. HEPPT: Okay.

24 BY MR. HEPPT:

25 Q You testified that you were retained by

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1 question. Counsel, I can represent to you that
2 there's a lot of work done regarding the
3 formation of the first corporation. Then,
4 there was work done for the amendment, and it's
5 not in this one monthly billing which has been
6 marked Silk-2 dated April 17th, 2006. I'll
7 respectfully submit that your subpoena did not
8 ask for all of Stark & Stark records or billing
9 regarding formations of all corporations. You
10 were just asking about Venustas, and you can
11 see that there are in E-mails which are not
12 identified on this bill, but this attempted to
13 indicate what happened on March 17th and what
14 Myra billed for, and you have that particular
15 E-mail.

16 MR. HEPPT: I'm just trying to get an
17 E-mail of what we're looking at, if there are
18 other -- if there are other similar documents
19 that would reflect work relating to the name
20 change or the formation of the LLC that
21 eventually became known as Venustas
22 International.

23 MR. REILLY: The answer to that is yes.
24 There's other E-mails, documents and billing
25 regarding the formation of the corporation in

8 (Pages 26 to 29)

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1 its various fonns. They're in front of us, and
2 my position stands the same. You didn't ask
3 for everything. There's numerous documents.

4 MR. HEPPT: Yeah. The subpoena speaks fo
5 itself. I think the subpoena is pretty clear
6 on what it asks for.

7 MR. REILLY: The whole file is here. If
8 for some reason you think we need to go through
9 that, we can do that.

10 MR. HEPPT: I'm just going to make a
11 request on the record for the production of all
12 billing, E-mails, other correspondence, all of
13 which are called for by the subpoena in
14 connection with the fonnation of the LLC which
15 eventually became known as Venustas
16 International.

17 BY MR. HEPPT:

18 Q Let me ask you now going back to Silk
19 Exhibit 2 there's an entry on February 3rd, 2006 by
20 Miss Gibson. The description is "Corporate search for
21 name availability". Do you see that?

22 A Yes.

23 Q Do you know what name she was searching?

24 A No.

25 Q This was prior to the E-mail that you

1 she did her search in New Jersey.

2 Q Okay. So, would that lead you to conclude
3 that when she was searching for a corporate name
4 availability in February, she was searching for all
5 three names?

6 MR. SHEPHERD: I object to the fonn of
7 that question.

8 BY MR. HEPPT:

9 Q You can answer.

10 A Yes.

11 Q Now, there's an entry, and I take it it's
12 by you, SLK, on February 3rd, 2006. Do you see that?

13 A Yes.

14 Q It reads "Conference with Myra C. Gibson,
15 legal assistant, to review her search of an LLC name an
16 E-mail she sent to Mr. Sam Ghussan". Do you see that

17 A Yes.

18 Q Do you recall having that conference with
19 Miss Gibson?

20 A Only vaguely, but she would nonnally come back
21 to me, show me what the search was, and I assume from
22 this she sent it on to Mr. Ghussan.

23 Q And you made that entry; correct?

24 A Yep.

25 Q That was an entry you made on your

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1 received from Mr. Ghussan on or about March 17th; isn't
2 that correct? This entry. I'm sorry.

3 MR. REILLY: We'll stipulate the time
4 periods are different, at least a month period.

5 BY MR. HEPPT:

6 Q I think I marked that. I don't remember
7 what the exhibit number is, the E-mail you received from
8 Mr. Ghussan.

9 A Silk Exhibit 6.

10 Q And particularly bringing your attention
11 to the date of that E-mail.

12 A March 17th, 2006.

13 Q Does that refresh your recollection in any
14 way as to what name was being searched by Miss Gibson o
15 February 3rd?

16 A No.

17 Q Was she -- would she have been searching,
18 to your knowledge, the availability of the three names
19 that were discussed previously?

20 A That would be my guess.

21 Q Did you have any discussions with
22 Miss Gibson in terms of what she was doing in February
23 2006 in terms of searching for name availability?

24 A I think she came back to us and told us that The
25 Pulse was not available and that the other two were when

1 computer at your desk?

2 A Yes.

3 Q When you met with her, Miss Gibson, did
4 you review or did she have a copy of the E-mail that sh
5 sent to Mr. Ghussan?

6 A I don't know.

7 MR. HEPPT: I don't believe I've seen a
8 copy of that E-mail unless I'm mistaken.

9 MR. REILLY: Off the record.
10 (Whereupon a discussion was held off the
11 record.)

12 MR. HEPPT: We've just spent a few minutes
13 going through the file trying to locate the
14 E-mail that Miss Gibson sent to Mr. Ghussan on
15 or about February 3rd, 2006, and it does not
16 appear to be in the file that's present in the
17 conference room, and I would -- and I would
18 just call for the production of that E-mail.

19 MR. SHEPHERD: I'm a little confused.

20 MR. HEPPT: Yeah.

21 MR. SHEPHERD: Because it seems to me tha
22 the document I just gave you marked 0008 shows
23 -- is an E-mail that was sent on February 3rd,
24 2006 regarding searching.

25 MR. HEPPT: Is to Mr. Silk, not to

9 (Pages 30 to 33)

Mr. Ghusson.

MR. SHEPHERD: Oh, okay.

MR. REILLY: Counsel, you're correct. As far as I know, there is no such E-mail in the file that was being produced. If one exists, obviously I'll provide that to both Counsel.

MR. HEPPT: Thank you.

MR. SHEPHERD: I reviewed the file too and I've seen nothing.

MR. HEPPT: If it exists, I'd like to get a copy. If it doesn't, I'd like somebody to tell me you can't find it, it doesn't exist.

That's fine.

BY MR. HEPPT:

Q Now, going back to Exhibit 2, Mr. Silk, do you see there's an entry by Miss Gibson on March 17th, 2006 and her entry reads "Follow-up regarding Trademark Search and Registration, Corporate Search for name availability". You see that?

A Yes.

Q Do you know what she meant by that entry?

MR. SHEPHERD: Objection to the form of the question.

BY MR. HEPPT:

Q You can answer it.

she hit a box that brings that out.

Q Okay.

MR. REILLY: We're discussing the internal billing that's been marked Silk-2 when you're answering this line of questioning?

THE WITNESS: Yes.

MR. HEPPT: Yes.

BY MR. HEPPT:

Q Do you know whether Miss Gibson had any discussion with Mr. Ghusson or Miss Bums regarding the trademark search and registration?

A Independent of any discussion I may have had the answer is no.

Q Thank you.

IS And you testified that you had two discussions that you recall with Mr. Ghusson regarding the trademark search; is that correct?

MR. SHEPHERD: Objection to the form of the question.

THE WITNESS: Yes.

BY MR. HEPPT:

Q Let me hand you what's been marked as Silk Exhibit 4, and this document has the bates number 56.

Can you tell me what this document is, Mr. Silk?

A I believe this is my last search of the name

A Yes.

Q And what is that?

A This is when she prepared the estimate for the work.

Q Okay. And that's the document that's been marked as Exhibit 3?

A Yes. Well, I shouldn't say yes. Let me look.

Q I'm not trying to trick you.

A Yes.

Q What did she mean, if you know, by follow-up regarding trademark search?

A Myra--

MR. SHEPHERD: Objection to the form of the question.

THE WITNESS: Myra has a listing of items that she would just check off and, unfortunately, they're not -- I mean they're preprinted statements. So, they don't all fit into the box, and this was the one she checked which is when she does this, that's the wording or the coding that comes up in our system.

BY MR. HEPPT:

Q Oh, okay. She didn't actually type in the words follow-up regarding trademark search?

A I don't believe so. I think -- no, no. I think

availability of Venustas International in New Jersey.

Q Okay. And is this a printout from the New Jersey website?

A I don't know.

Q Have you ever conducted a search yourself regarding --

A No.

Q -- the New Jersey corporate names?

A No.

Q Okay. The document there's a -- towards the bottom of the document, I guess it's about, well, maybe two-thirds of the way down it says "Enter text" and the words "Venustas International" appear. Do you see that?

A Yes.

Q Is it your understanding that Miss Gibson entered those words to conduct the search on that name?

A I assume.

Q Okay. And about a third of the way down there's a line that reads "There were no records found that meet your search criteria". Do you see that?

A Yes.

Q Do you have any understanding as to what that means?

A I only assume that it means they could not find

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1 another Venustas International in New Jersey.
 2 Q Did you discuss this document with
 3 Miss Gibson?
 4 A No.
 5 Q Did you discuss this document with
 6 Mr. Ghusson?
 7 A No.
 8 Q There are various boxes that appear on
 9 this document with what appear to be Xs in them. Do you
 10 see that?
 11 A Yes.
 12 Q Do you have any idea what those are?
 13 A No.
 14 Q The instructions that appear about a third
 15 of the way down states "Select one search criterion from
 16 the list below". Do you see that?
 17 A Yes.
 18 Q And then there are three, what appear to
 19 be three criterion, business entity search, UCC search
 20 and -- the document is a little cut off. Looks like
 21 trade name service mark. Do you see that?
 22 A Yes.
 23 Q Do you know which one of those three
 24 criterion Miss Gibson chose when she conducted the
 25 search?

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1 A No.
 2 MR. SHEPHERD: Object to the form of the
 3 question.
 4 THE WITNESS: No.
 5 BY MR. HEPPT:
 6 Q When I asked you a little bit earlier
 7 about the quote that Miss Gibson had prepared with
 8 regard to the trademark name search, you used the phrase
 9 that I'm not familiar with. It was a knock-out report I
 10 think.
 11 A Knock-out search.
 12 Q Can you explain what that is?
 13 A No. I sort of have a general idea, but the
 14 answer is no.
 15 Q What's your general understanding as to
 16 what that means?
 17 A It's a fast search with the name that she uses
 18 initially, and that may be an initial search just to
 19 check to see if there is any problem with a similar
 20 name.
 21 Q Do you know where she would conduct that
 22 search?
 23 A From her computer.
 24 Q What website would she would go to?
 25 A No.

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I Q She was never told by anyone in the firm
 2 to conduct that search; correct?
 3 A I don't believe so.
 4 Q And why is that?
 5 A Because we weren't retained at that point to do
 6 that search. Our normal -- our normal search when we
 7 form these entities is just in the state that we're
 8 going to form them within.
 9 Q Right. And you described the discussion
 10 that you generally have with clients regarding the
 11 advisability of a trademark search; is that correct?
 12 A Yes.
 13 Q And you testified I believe, correct me if
 14 I'm wrong, that you recall having that discussion with
 15 Mr. Ghusson?
 16 A Yes.
 17 Q On at least two occasions?
 18 A Correct, on two occasions. I don't believe more
 19 than two.
 20 Q Okay. And the second occasion was around
 21 the time that Miss Gibson had prepared the quote or
 22 conducted the search?
 23 A It had to be after the quote and probably before
 24 the filing or approximately around the filing of the
 25 amendment of the Certificate of Formation.

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1 Q Okay. Your firm was never authorized to
 2 perform that work; correct?
 3 A I wasn't.
 4 Q Was anyone in your firm authorized to do
 5 so?
 6 A No one has come forward to tell me that they
 7 have.
 8 Q Okay. Were you the engagement partner, so
 9 to speak, on this engagement?
 10 A If you want to use that term, yes.
 11 Q And you were the partner with primary
 12 responsibility for communicating with the client;
 13 correct?
 14 A Yes.
 15 Q So, if anyone had been authorized in your
 16 firm, you would expect to know that; isn't that fair to
 17 say?
 18 A Well, not necessarily.
 19 Q Can you explain what you mean?
 20 A If the client had spoken to Mrs. Gibson directly
 21 or if Stuart Mickelberg, who is an associate working
 22 with me at the time, was given authorization, then
 23 certainly there would probably have at that time sent
 24 out another engagement letter and done the search or if
 25 he had forgotten to send out the new engagement letter

11 (Pages 38 to 41)

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1 -- we have an engagement letter for this type of work.

2 They may have gone ahead and just done it.

3 Q To your knowledge sitting here today, was
4 that work done?

5 A No.

6 Q Do you have any understanding as to why
7 that work was not done?

8 A I can only assume because we were never given
9 the authorization to do the work.

10 Q Okay. Let me hand you what's been marked
11 as Silk Exhibit 5, and this document bears the bates
12 number 1213. Can you tell me what this document is?

13 A Yes. This is a fixed fee bill that -- it's a
14 memo bill we sent out based upon a couple different
15 things, number one, the engagement letter, and the Silk
16 Exhibit 2 which is the information we receive on a
17 monthly basis or when we ask for it of how much time we
18 on that particular account.

19 Q Was it -- was the invoice that's been
20 marked as Silk Exhibit 5 for a particular time period or
21 was this for the entire engagement?

22 A Because it's a fixed fee, it would have been for
23 the entire engagement.

24 Q And is this an invoice you would have
25 provided to the client at the conclusion of the work?

1 correct?

2 A Yes.

3 Q Miss Krumm prepared the invoice that's
4 been marked as Silk Exhibit 5 based on her review of
5 what's been marked as Silk Exhibit 3?

6 A Yes.

7 Q And--

8 A Silk Exhibit 2.

9 Q I'm sorry. Thank you.

10 Did you review the invoice before it went
11 out?

12 A No.

13 Q Did anyone at the firm review the invoice
14 before it went out --

15 A No.

16 Q -- to your knowledge?

17 So, Miss Krumm would have prepared it and
18 mailed it out to the client?

19 A Yes.

20 Q Is that standard practice at the firm?

21 A Yes.

22 Q Sitting here today is it fair to say that
23 Silk Exhibit 5 is inaccurate?

24 A Yes.

25 Q Because the trademark search was never

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1 A Yes.

2 Q And do you recall providing this invoice
3 to the client?

4 A No, but I'm sure it went out from -- at that
5 time, whoever my secretary was.

6 Q Did you -- did the client question this
7 bill in any way?

8 A I don't believe so.

9 Q Okay. If you look at the description of
10 legal services, the document -- the document reads "For
11 Professional Services rendered, including corporate and
12 trademark search for name availability". Do you see
13 that?

14 A Yes.

15 Q Did you explain why your invoice reflected
16 trademark searching for name availability?

17 A Because Jean Krumm, who is the secretary at the
18 time, took a look at this document here, saw the wordin
19 on March -- this is -- excuse me. Silk-2. Saw the
20 wording trademark search and just decided to put that in
21 the language of the fixed fee.

22 Q With what -- what is the name of the
23 secretary? I'm sorry.

24 A Jean Krumm, K-r-u-m-m.

25 Q So, Miss Krumm -- it is Miss Krumm;

1 done; correct?

2 A Yes.

3 Q Is it inaccurate in any other way?

4 A I don't know if the search is really a -- you
5 know, discussed as a corporate search as opposed to a
6 limited liability company search.

7 Q Okay. Other than that, are there any
8 other inaccuracies that you can spot?

9 A No.

10 Q Okay. The total amount due is the correct
11 amount; correct?

12 A I believe so.

13 Q Okay. Can you tell me why the file was
14 bated stamped?

15 MR. REILLY: Object to the form of the
16 question. Counsel, I had it bated stamped. I
17 don't think that's a proper line of
18 questioning.

19 BY MR. HEPPT:

20 Q Has there been a claim asserted against
21 the firm by the client?

22 MR. REILLY: Object to the form of the
23 question. Has nothing to do with this
24 particular deposition.

25 MR. HEPPT: He can answer yes or no. Are

12 (Pages 42 to 45)

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11 you instructing him not to answer?
2 MR. REILLY: I'm instructing you there's
3 been no claim made.
4 BY MR. HEPPT:
5 Q Mr. Ghusson, to your knowledge has there
6 been a claim asserted?
7 MR. SHEPHERD: No. He's Silk.
8 BY MR. HEPPT:
9 Q I'm sorry.
10 Has there been a claim asserted?
11 A Not my knowledge.
12 Q What's your understanding of the term a
13 claim asserted?
14 A Someone has stated that we have done something
15 wrong, whether it be malpractice or what have you, and
16 to the best of my knowledge, there's been no claim made.
17 Q Okay. Has the client criticized the work
18 that was done by the firm?
19 A I don't know.
20 Q Have you had any discussions with the
21 client along those lines?
22 A No.
23 Q Has anyone at the firm had those types of
24 discussions with the client?
25 A I don't know.

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1 Q You indicated a little earlier that your
2 primary contact with the client was with Mr. Ghusson.
3 Was that correct?
4 A Yes.
5 Q You also told me I think -- and correct me
6 if I'm wrong. I don't mean to characterize you or put
7 words in your mouth. You may have been on one or more
8 conference calls with Miss Burns?
9 A Yes.
10 Q And do you remember whether any of those
11 conference calls involved the selection of a name of the
12 entity?
13 A No. I don't believe they dealt with the name.
14 Q Okay. Just give me a minute.
15 MR. HEPPT: Mark these.
16 (E-mail dated February 15th, 2006 was marked
17 Silk-9 for identification.)
18 (E-mail dated February 15th, 2006 with
19 attachments was marked Silk-10 for
20 identification.)
21 BY MR. HEPPT:
22 Q Okay. We are back on.
23 Mr. Silk, let me hand you what's been
24 marked as Silk Exhibit 9 which is bates stamped 15. It
25 appears to be an E-mail from Miss Gibson to yourself

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1 dated February 15th, 2006 regarding "Sam Ghusson - Th(
2 Pulse, LLC". Remember receiving that E-mail from
3 Miss Gibson?
4 A No, but I seen this.
5 Q You have no reason to believe that you did
6 not receive this E-mail?
7 A No.
8 Q In that E-mail it's very short, she is
9 just basically saying The Pulse is not available;
10 correct?
11 A Yes.
12 Q Did you have any discussions with her
13 regarding why the name The Pulse was not available?
14 A No, not that I remember.
15 Q Okay. Did you ask her to provide any
16 documentation indicating why she had concluded that Th
17 Pulse was not available?
18 A No.
19 Q Okay. Let me hand you what's been marked
20 as Silk Exhibit 10 which is a multi-page document, the
21 first page of which -- well, the bates range is 16
22 through 27, and the first page appears to be an E-mail
23 from Miss Gibson to Allen Silk dated February 15th, 200
24 at four-eleven P.M., and the subject is "Pulse - See
25 Attached".

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1 MR. SHEPHERD: This is Exhibit 10?
2 MR. HEPPT: Yes.
3 MR. SHEPHERD: The one before that, the
4 one Pulse not available, that's nine?
5 MR. HEPPT: Yeah, bates 15, right.
6 BY MR. HEPPT:
7 Q Have you seen that document before today?
8 A I've seen the cover. I'm not sure I opened up
9 the attachment.
10 Q Okay.
11 A And I may have opened up, saw what it was and
12 decided not to review it.
13 Q I wouldn't blame you. The E-mail
14 indicates -- this is explaining why the Pulse was not
15 available; is that correct?
16 A Yes.
17 Q And the attachment, can you explain your
18 understanding of what the attachment is?
19 A It seems to be the search of all the names using
20 the word Pulse I would think within New Jersey.
21 Q Okay. Okay. Is it fair to say those
22 documents are similar to the document we looked at
23 earlier that Miss Gibson had conducted a search in the
24 New Jersey data base for Venustas International?
25 A I would just be assuming. I don't know.

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Q Let me find that. That was a terrible question anyway.

MR. REILLY: Off the record. (Whereupon a discussion was held off the record.)

BY MR. HEPPT:

Q Okay. Mr. Silk, I've handed you again Silk Exhibit 4. Does this document appear to be similar to the attachment to Silk Exhibit 10?

A It has the statement that it's New Jersey State Business Gateway Service. It talks about in the one hand there may not have been anything with the name Venustas in New Jersey. This one, the word Pulse, which is a very common -- may have had many.

Q Apparently it did. Apparently it did.

Okay.

I apologize because I don't remember whether I've asked you this question before. If I did, I apologize. Did you inform Mr. Ghusson or Miss Burns that the name Venustas International was available for use by their LLC?

A I don't remember if I did it or Myra did it.

Q Okay. We saw on that printout at the time that there was a reference to an E-mail by Miss Gibson to Mr. Ghusson regarding the search of an LLC name. D

1 conducted; is that correct?

A I believe.

Q It's fair to say though Miss Gibson or yourself or someone told Mr. Ghusson at some point in time that the name Venustas International was available for use by the LLC that was being formed; correct?

MR. SHEPHERD: Objection to the form of the question.

THE WITNESS: Yes. I believe that Myra or I, more likely Myra told Mr. Ghusson that the name was available.

BY MR. HEPPT:

Q Okay. When she told Mr. Ghusson the name was available, was she telling Mr. Ghusson it was clear for all purposes?

MR. SHEPHERD: Objection to the form of the question.

BY MR. HEPPT:

Q Do you you understand what I mean when I say it was clear for all purposes?

A I understand.

Q Okay.

A I would say no because the scope of our engagement had nothing to do at that time with the trademark work.

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1 you see that? Remember that testimony, that document?

MR. REILLY: Which date is it?

MR. HEPPT: It's February 3rd, 2006.

MR. REILLY: We're looking at Silk-2?

MR. HEPPT: Correct.

BY MR. HEPPT:

Q Do you remember we talked about that entry a little earlier?

A Yes.

Q Is it your understanding that that -- well, strike that.

The E-mail that's referenced in that entry, would that be the time that Miss Gibson would have communicated the name availability to Mr. Ghusson?

MR. SHEPHERD: Can you read the question back please? I need what exhibit we're referring to.

MR. HEPPT: Two.

(Whereupon the requested portion was read back.)

THE WITNESS: I would assume so.

BY MR. HEPPT:

Q And that is the E-mail that we've looked for in the file and weren't able to find. I've made that request that it be -- that that search be

1 MR. HEPPT: Okay. That's all I have right now. Thank you, Mr. Silk.

MR. SHEPHERD: I need to redact something or I can -- I don't know what I'm going to do. I have to redact something.

MR. REILLY: Off the record. (Whereupon a discussion was held off the record.) (Whereupon a recess was taken.)

CROSS EXAMINATION

BY MR. SHEPHERD:

Q Mr. Silk, my name is Bob Shepherd. I represent the defendant in a litigation entitled Aedes DeVenustas versus Venustas International, now Batallure Beauty, LLC in the Southern District of New York, and I am going to ask you now some questions on behalf of the defendant LLC. I'm going to show you a document.

MR. SHEPHERD: Mark this.

(Document entitled "New Jersey LLC Formation Checklist" was marked Silk-II for identification.)

BY MR. SHEPHERD:

Q I had a document marked Silk-II. Can you tell me what that is?

A This is a list --

14 (Pages 50 to 53)

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1 MR. REILLY: Before you answer, it's been
2 bated stamped 01000. Okay.
3 MR. HEPPT: Single-page document.
4 MR. SHEPHERD: Two pages.
5 MR. REILLY: And 01001.
6 THE WITNESS: This is a form that I only
7 seen after the fact by Myra Gibson that she
8 uses to determine her billing as I understand
9 it.
10 BY MR. SHEPHERD:
11 Q Okay. Was it -- what has to happen--
12 well, let's -- what does box one say on that list?
13 A "Client confirmation, re: no trademark work."
14 Q Is that box checked in this file?
15 A No.
16 Q What has to happen with regard to a client
17 before that box can be checked?
18 A I don't know.
19 Q Are you aware of whether there was a
20 similar -- strike that.
21 As you can see from the top of the
22 document, this particular document relates to --
23 MR. SHEPHERD: I'm sorry. I should have
24 passed copies out.
25 MR. REILLY: Do you have copies?

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MR. SHEPHERD: Do you have copies?
MR. REILLY: No.
BY MR. SHEPHERD:
Q I note that this form coming from the file
relates to an LLC named RBSG Enterprises, LLC. Was
there a similar checklist in the file for Venustas
International, LLC?
A I don't know.
Q Okay.
MR. REILLY: Counsel, I can represent my
review of the file indicates there's not.
MR. SHEPHERD: Okay.
BY MR. SHEPHERD:
Q Now, do you consider as a corporate
attorney the issue of trademark law to be important when
you're choosing a name to form a corporation?
A Depends on the type of entity.
Q Well, can you explain the circumstances
under which it would be important and would not be
important?
A Certainly I would admit for a company like the
Venustas International if it was going out and doing
work on a national and regional basis, it would be
important for them to have this work performed.
Q Okay. When wouldn't it be important in

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1 your mind?
2 A My wife and I form an LLC to buy a piece of
3 property. We're not going out and doing any work in the
4 general area. We don't care if someone tells us to
5 change our name from Allen and Judy Silk, LLC.
6 Q Now, when you formed this company, did you
7 come to a conclusion as to whether or not this would be
8 a company that would be operating on a national or
9 regional basis?
10 MR. HEPPT: Objection to the form.
11 BY MR. SHEPHERD:
12 Q You can answer.
13 A Can you repeat that for me please?
14 MR. SHEPHERD: Read it back.
15 (Whereupon the requested portion was read
16 back.)
17 THE WITNESS: I asked Mr. Ghussan what he
18 thought would happen with the name of this
19 company, and he felt that this was a temporary
20 name that would be changed at a later date.
21 BY MR. SHEPHERD:
22 Q Which name are we talking about? RBSG?
23 A RBSG, LLC or Enterprises, LLC.
24 Q When the name Venustas International was
25 chosen, did you have an opinion as to whether or not

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1 this corporation would be doing business on a national
2 or regional basis?
3 A It was still very early on. At the time that we
4 had changed the name, to the best of my knowledge, a
5 discussion to me was we were just seeing whether or not
6 we could come to an agreement. This is Mr. Ghussan and
7 his partner, and that at that moment they weren't doing
8 any work that would have created the use of that name
9 out of the general public.
10 Q Okay.
11 A This is by the way in March of 2006.
12 MR. SHEPHERD: Mark this.
13 (Letter dated December 30th, 2005 with
14 attachment was marked Shepherd-12 for
15 identification.)
16 BY MR. SHEPHERD:
17 Q I've had the court reporter hand you a
18 document we've marked as Silk-12. Can you tell me what
19 that is?
20 MR. REILLY: Just so the record is
21 correct, it's a document that's been marked
22 1002 and that's Silk-12.
23 THE WITNESS: This is an engagement letter
24 that we sent out to Mr. Ghussan and
25 Mrs. Bums-McNeil (phonetic).

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1 MR. REILLY: Also note that Silk-12 runs
 2 to 1005.
 3 BY MR. SHEPHERD:
 4 Q Now, I'd like you to look at page two of
 5 Exhibit 12. Down at the bottom you see the section
 6 entitled LLC.
 7 MR. REILLY: There's no question pending.
 8 MR. SHEPHERD: I know. I had to catch up
 9 with my questions.
 10 BY MR. SHEPHERD:
 11 Q In section two of the letter it states
 12 that with regard to the LLC you will conduct a name
 13 availability search; isn't that correct?
 14 A Yes.
 15 Q It doesn't say in that letter that this
 16 name availability search will not include a trademark
 17 search; does it?
 18 MR. REILLY: Object to the form of the
 19 question. You can answer.
 20 THE WITNESS: No.
 21 BY MR. SHEPHERD:
 22 Q It doesn't tell the client that the
 23 trademark search will cost extra; does it?
 24 MR. REILLY: Object to the form of the
 25 question. There's no reference to trademark

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1 search in this document.
 2 You can answer.
 3 THE WITNESS: There's nothing in this
 4 letter that discusses it.
 5 BY MR. SHEPHERD:
 6 Q Is there another letter that you -- is
 7 relevant to this particular file that does talk about a
 8 trademark search?
 9 A We didn't get that far, but a new engagement
 10 letter would have gone out if in fact we were doing the
 11 trademark search.
 12 Q Okay. Now, when did you start, first
 13 start doing work for Mr. Ghusson in any capacity?
 14 A Me or Stark & Stark?
 15 Q Let's start with you first.
 16 A This probably was the -- I'm just guessing.
 17 This was the first matter I worked on for Mr. Ghusson.
 18 Q Had Stark & Stark done work for
 19 Mr. Ghusson before?
 20 A Yes.
 21 Q What type of work was that?
 22 A Estate planning.
 23 Q When Mr. Ghusson came to see you, did
 24 anyone give you any information about his background?
 25 A No, but I knew Mr. Ghusson from prior, prior to

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1 this time.
 2 Q Well, what did you know about him?
 3 A That he had been a successful individual in his
 4 field and that he was now looking to get involved in a
 5 new business.
 6 Q Okay. Were you -- do you know whether or
 7 not he had run his own business before or whether he
 8 worked for other people?
 9 A I only knew that he had worked for other people.
 10 Q Okay. Did you consider him to be a
 11 sophisticated person when it comes to the incorporation
 12 of a business?
 13 A I considered him to be a sophisticated business
 14 person. I don't know if he had ever formed or been
 15 involved in the formation of an entity.
 16 Q Do you -- when you are engaged by someone
 17 for the first time and you don't know whether they are a
 18 sophisticated entrepreneur, someone who starts their own
 19 companies, do you speak to them differently then you do
 20 someone who is an entrepreneur?
 21 MR. HEPPT: Objection to the form.
 22 THE WITNESS: I don't know that I speak to
 23 them differently. We may have discussed more
 24 things explicitly as opposed to generalities.
 25 BY MR. SHEPHERD:

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1 Q Okay. Now, Mr. Silk, I'm going to hand
 2 you -- it's my copy of Silk Exhibit 2. Why don't we go
 3 Silk Exhibit 2.
 4 MR. SHEPHERD: I'd like to mark this
 5 Exhibit Silk-13.
 6 (Time record was marked Silk-13 for
 7 identification.)
 8 BY MR. SHEPHERD:
 9 Q Now, Mr. Silk --
 10 MR. REILLY: You have asked him to look at
 11 Silk-2. Are you finished with it?
 12 MR. SHEPHERD: He's going to need both of
 13 them. They work together.
 14 MR. REILLY: Got you.
 15 BY MR. SHEPHERD:
 16 Q I'd like you to take a look at that and
 17 tell me is Silk -- Silk-2 and Silk-13 from the same
 18 file, same billing file?
 19 A No. When I say the same billing file, they're
 20 to the same clients, but two different matters.
 21 Q Was -- we know that Silk-2 deals with the
 22 formation of the LLC and that was a fixed fee bill; is
 23 that correct?
 24 A Yes.
 25 Q And for Silk-13, what does that relate to?

16 (Pages 58 to 61)

A The general business hourly portion.

Q Okay. So, there were things that were done that fell outside of the formation of the LLC that you were doing for Mr. Ghussan and Mrs. Burns?

MR. HEPPT: Objection to the form.

THE WITNESS: I don't know if this is an incorrect entry because it's difficult for us at times to understand whether it's going to be charged three or charged the four.

BY MR. SHEPHERD:

Q I understand.

A My sense here is Myra and myself may have decided that this was not part of the fixed fee at least for myself. It was part of the hourly fee.

Q That's fine. I asked a different question though.

MR. SHEPHERD: Repeat my -- read back my question.

(Whereupon the requested portion was read back.)

MR. HEPPT: Objection to the form again. Just repeat the objection.

THE WITNESS: Yes, but again I'm not sure these items shouldn't have been over in dash four as opposed to dash three.

either of these bills that at this point you've had a discussion with Mr. Ghussan or anyone else regarding trademarks; is that correct?

A Nothing on the bill.

Q Right. Is there anything in the file at all that's a memo that indicates you had a discussion with Mr. Ghussan or Mrs. Burns regarding trademarks at this point?

A Not to my knowledge.

Q I'm going to show you two exhibits, Silk-7 and Silk-8.

MR. REILLY: Off the record.

(Whereupon a discussion was held off the record.)

BY MR. SHEPHERD:

Q To which entries on -- to which -- which entries on these two bills correspond to those two E-mails?

MR. HEPPT: Objection to the form.

MR. REILLY: Understand the question?

THE WITNESS: My -- in looking at the bates, it would seem to me that Myra billed her time and so did I unfortunately to dash three for the Silk-7 and the same is true of eight.

BY MR. SHEPHERD:

BY MR. SHEPHERD:

Q That's fine. I think this is -- leave those there.

MR. SHEPHERD: I thought we had marked 0008 as an exhibit number, but I can't --

MR. HEPPT: Sounds familiar.

MR. SHEPHERD: We at least talked about it.

MR. HEPPT: I don't think I marked it.

MR. SHEPHERD: Mark this.

(E-mail dated February 3rd, 2006 was marked Silk-14 for identification.)

MR. REILLY: Document marked Silk-14 is bated stamped 08.

BY MR. SHEPHERD:

Q Okay. It says -- it says on the -- in the document now marked Silk-14 that RBSG Enterprises, LLC is available. Is that at the time -- does that relate to the MCG reference on Silk Exhibit 2 and dated 2/3/06 and then the following entry 2/3/06 "Conference with Myra C. Gibson, legal assistant, to review her search of an LLC name and E-mail she sent to Mr. Sam Ghussan"?

A They line up on the same bates. I have to assume that that is true.

Q Okay. Now, there's no indication on

Q Okay.

MR. HEPPT: I'm going to object to the characterization of documents that are before Mr. Silk as bills. The question you asked and prior question you asked referred to those documents as bills. I think there's been testimony today that those were not in fact bills.

MR. SHEPHERD: Time records. Would that be better? Let's just call them time records.

THE WITNESS: You asked me a question.

MR. HEPPT: Okay. We're objecting and trying to clarify the record.

BY MR. SHEPHERD:

Q Now, there are also on Silk Exhibit 2, there are three entries on 2/6. The first one is telephone -- the second one. Pardon me. The second one. No. Who's SAM? I'm sorry.

A Stuart Mickelberg.

Q And then the last one is a telephone conference with Mr. Ghussan. Is this the same telephone conversation that was -- that Mr. Mickelberg was on?

A I don't know.

Q Okay. Is this the conversation in which you also discussed trademarks?

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1 A I don't know if it was here or was when we first
2 discussed the formation of an entity. I go through it
3 with a client.
4 Q So, you have no specific recollection of
5 when you had a conversation with Sam Ghusson about
6 searching corporate names as trademarks?
7 A I know that in the initial stages which was
8 prior to Myra doing this work it was clear to both of us
9 that we weren't doing any trademark work. We were
10 merely searching to see if the entity was available in
11 the State of New Jersey.
12 Q And when you say both of us, to whom are
13 you referring?
14 A Sam Ghusson and myself.
15 Q Okay. What made that clear to
16 Mr. Ghusson? I believe it was clear to you.
17 A Because we discussed the fact that he would have
18 to do more searches. He'd have to go into greater depth
19 to deal with this if he was going to be using this on a
20 regional or national basis. At this time, he wanted to
21 form an entity so he could start his accounting, deal
22 with the expenses and start negotiating with
23 Mrs. Bums-McNeil for the -- to see whether or not they
24 could have a partnership together.
25 Q Was it -- was the conversation in which

1 I'm missing a link here. Just a second.
2 MR. REILLY: What are you looking for?
3 MR. SHEPHERD: I'm looking for -- there's
4 an E-mail on or about --
5 MR. REILLY: Off the record.
6 (Whereupon a discussion was held off the
7 record.)
8 BY MR. SHEPHERD:
9 Q Okay. I'm going to show you Silk-9 and
10 Silk-10.
11 MR. REILLY: Those were previously marked
12 Counsel.
13 MR. SHEPHERD: Yes. Those are previously
14 marked exhibits.
15 BY MR. SHEPHERD:
16 Q Now, looking at Silk-2 and Silk-14, do
17 these E-mails relate to the entries on Silk-14 of
18 2/15/06 and on Silk Exhibit 2 of 2/15/06?
19 MR. HEPPT: I believe you're referring to
20 Silk-13, not 14.
21 MR. SHEPHERD: Yes. You're right.
22 THE WITNESS: Well, what it looks like is
23 that on that date, which is February 15th, Myra
24 billed her time to the dash four number which
25 is the fixed file shown on Silk-2, and I billed

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1 you discussed trademarks with Mr. Ghusson was it just
2 you and he that were involved in that conversation?
3 A I don't know whether Stuart was on that or not.
4 MR. REILLY: Note my objection to the line
5 of questioning because of the prior testimony
6 regarding what occurred in March.
7 MR. SHEPHERD: So noted.
8 BY MR. SHEPHERD:
9 Q And I think it's your testimony that there
10 was no confirming E-mail to Sam regarding the trademark
11 issue?
12 A Nothing that we would have said something in the
13 negative that we're not doing this work.
14 Q Okay. Do you do that in any instance,
15 send a negative E-mail that you're not going to do
16 something?
17 A I don't, but I saw something checked off about
18 that where there is a checkoff.
19 Q And in this case it wasn't checked?
20 A Only because I don't know if that comes from a
21 form book they found or something else. It's her way of
22 keeping track of what she does, but I know it's not
23 something that I had seen before this case.
24 Q Okay. Now, I'll take those two E-mail
25 exhibits back, but not the bills, not the time records.

1 my time to the Silk-13 which is dash three
2 which is the hourly general business.
3 BY MR. SHEPHERD:
4 Q But those two entries relate to that
5 E-mail -- those E-mail exchanges and the attached
6 documents regarding what was discovered on the New
7 Jersey State website for Pulse?
8 MR. HEPPT: Objection to the form.
9 THE WITNESS: Yes.
10 BY MR. SHEPHERD:
11 Q Okay. Now, for your entry it says that
12 you had a telephone conference with Mr. Ghusson to
13 discuss a new name for the LLC. Is that how -- is that
14 how you got the -- knew to search the Pulse?
15 MR. REILLY: Object to the form of the
16 question. You didn't provide a date I don't
17 believe in your question. Which exhibit are
18 you referring to?
19 MR. SHEPHERD: We're looking at Exhibit
20 Silk-13, and we're looking at the entry of
21 2/15/06.
22 THE WITNESS: I can only assume that whe
23 the Pulse wasn't any good I probably conveyed
24 that information verbally to Mr. Ghusson.
25 BY MR. SHEPHERD:

18 (Pages 66 to 69)

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Q Okay. It would -- but there are two
2 telephone conversations in that entry from 2/15/06;
3 aren't there?
4 A I assume there were.
5 Q It also says that you reviewed the
6 searches prepared by Mrs. Gibson. Did you do that?
7 A Yes. I said that, you know, this is something
8 that I may or may not have opened. I probably did open
9 it and take a look through it. That's the search on the
10 Pulse.
11 Q Okay.
12 A I don't remember it but.
13 Q And you didn't provide any of these
14 documents, these search documents to Mr. Ghusson. You
15 just told him it wasn't available?
16 A The best of my knowledge it was just the
17 conveyance of the message.
18 Q Okay. You can give me back the two
19 non-bill exhibits and take a look at that one.
20 MR. HEPPT: What exhibit is that?
21 MR. REILLY: Silk-6.
22 BY MR. SHEPHERD:
23 Q Now, there's no -- -- this is an E-mail to
24 you; correct?
25 A Yes.

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1 Q What did you do after you received this
2 E-mail?
3 A I believe that's when I asked Myra to prepare
4 the estimate for doing the trademark work, and I asked
5 her to prepare the change in the name from RBSG to
6 Venustus International.
7 Q Now, there's no entry on Silk Exhibit 2,
8 that time sheet for you on 3/17/06; is there?
9 A I don't see it.
10 Q Okay.
11 MR. HEPPT: I'm going to object to that
12 question also because we've had a series of
13 questions regarding the time sheets that are
14 marked as Exhibits 2 and 13, and there's been
15 testimony by the witness that some entries on
16 13 which relate to the 003 client matter number
17 should have been entered on 004 client matter
18 number, and, so, it's a misleading question in
19 the sense we've been going back and forth
20 between these two time sheets. I just note for
21 the record that Exhibit 13, which is a time
22 sheet, time records is one that has been
23 heavily redacted.
24 MR. SHEPHERD: It was redacted because
25 those are the only entries that really relate

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1 on the 003. That's Exhibit Silk-B. Those are
2 the only entries that relate to corporate
3 formation and trademarks.
4 MR. HEPPT: I'll just note for the record
5 that there is no entry on Exhibit 13 for anyone
6 on March 17th. The only entries that appear on
7 Exhibit 13 have to do with February 6th and
8 February 15th.
9 MR. SHEPHERD: Okay.
10 BY MR. SHEPHERD:
11 Q Now, it's your testimony that once you got
12 Silk-3 from Myra Gibson relating to the quote for
13 trademark work that you had a conversation with Sam
14 about that?
15 A Yes.
16 Q Why doesn't that conversation show up in
17 the billing records for either Exhibit 2 or Exhibit 13?
18 A I don't know that they don't show up in three.
19 MR. REILLY: Note my objection to this
20 line of questioning. Counsel, if you want to
21 see the internal billing which has the phone
22 call with Sam, we'll produce it, but I didn't
23 produce it to date. Let me rephrase that. You
24 want to see the billable event where he talks
25 to Sam?

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1 MR. SHEPHERD: Yes.
2 MR. REILLY: You want me to produce that?
3 MR. SHEPHERD: Yes.
4 MR. REILLY: Off the record for one
5 second.
6 (Whereupon a discussion was held off the
7 record.)
8 MR. SHEPHERD: Mark this.
9 (Time records were marked Silk-IS for
10 identification.)
11 BY MR. SHEPHERD:
12 Q I'm going to show you two exhibits.
13 Again, you're going to see Exhibit 2 and Exhibit 15.
14 Those are from your time sheets for this matter, and I'm
15 going to show you Exhibit Silk-3 which is the E-mail
16 that Myra Gibson sent to you that included information
17 about trademarks. As I said -- when I asked the
18 question before at the break, can you point to the entry
19 on either of those bills in which you discussed with
20 Mr. Ghusson the trademark issue, the searching of the
21 name as a trademark?
22 MR. HEPPT: Can I have that question
23 again?
24 (Whereupon the requested portion was read
25 back.)

19 (Pages 70 to 73)

MR. HEPPT: I'm just going to object to the fonn.

THE WITNESS: Yes. I mean it would be my recollection that I first of all would not bill a client to just explain to them what an estimate is. My sense it was after I received that and I would have said that it was on 3/20/06 during my conversation with Sam about various things.

BY MR. SHEPHERD:

Q But there's no reference to trademarks in that particular entry; is there?

A Only because I went to bill him for getting an estimate on what the trademark was. I wouldn't bill for that.

Q Is there any other note or memo or anything in the file which memorializes a conversation that you had with Sam about searching the name Venusta International as a trademark?

A No.

MR. SHEPHERD: Now, I'm going to do something a little bit unusual. I'm going to play a little piece of a tape recording and ask Mr. Silk to listen to it.

MR. REILLY: I object to the form of this

question. Do you have this conversation either typed -- we can take a look at it?

MR. SHEPHERD: I do indeed.

MR. REILLY: Why don't we mark that for identification.

MR. SHEPHERD: It's got a phone number on the back. We'll get rid of that.

Mark this.

(Typed page of a taped conversation was marked Silk-16 for identification.)

MR. REILLY: Can I read this before he listens?

THE WITNESS: So, this was on June 6th; is that what you're saying?

BY MR. SHEPHERD:

Q Yes.

MR. REILLY: 2007.

THE WITNESS: Okay.

BY MR. SHEPHERD:

Q Okay.

MR. REILLY: Before we begin, this was marked Silk-16, and it's entitled "Message from Allen" and it's Silk, F-i-l-k, which I'm sure meant Silk, June 6th, 2007 at twelve. (Whereupon a tape was played.)

TAPE RECORDING: "Hi, Bob. It's Allen Silk. I'm returning your call, but my

paralegal that did the work for that company is not here today, and my guess is in talking to her before that was just the typical with New Jersey or whatever state we were looking at to just see if it was available for notation. I know that we talk to all our clients about running some sort of federal, you know, check to see what's going to happen. Rachel Stark does most of that to see if we are going to try to protect the name federally, but I think that Sam was on his own course at that time and was going to deal with things as time went on, but I can't honestly remember at this point. I'm running to a meeting now, will be back around one-thirty. You can reach me in my office at 609-895-7265. Thankyou."

BY MR. SHEPHERD:

Q Do you recognize that voice?

A That's my voice.

Q Do you remember leaving that message?

A No.

Q Okay. I want to focus on the last line of the message. You said "but I can't honestly remember at

this point --" oh, I'm sorry. "Rachel Stark does most of that to see if we are going to protect the name federally, but I think Sam was on his own course at that time and was going to deal with things as time went on, but I can't honestly remember at that point." Today you've testified that you had two conversations with Sam and told him about doing a trademark search; is that correct?

A Yes.

Q And there is nothing in the file that memorializes either of those telephone -- either of those conversations with Sam; isn't that correct?

A Yes.

Q Well, then, what is it that happened between the time you left this message and now that makes you now remember that you had two telephone conversations with Sam about an issue that wasn't even memorialized in your file?

MR. HEPPT: Objection to the fonn.

THE WITNESS: Well, first of all, I don't remember if I said two telephone conversations, but I would have had a conversation with him initially about what we have to do. That would have been turned over to Rachel to do the work and Myra.

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1 Then, what refreshed my recollection was
2 the trademark search that Myra had sent to me,
3 and it made me recall at that point, this is
4 after the fact, that we did have a discussion.
5 So, irrespective of that, that's what occurred
6 after the fact when I went through the file.
7 MR. SHEPHERD: Okay. That's all I have.
8 MR. HEPPT: I have a couple of follow-up
9 questions. Do you have Exhibit number II?
10 REDIRECT EXAMINATION
11 BY MR. HEPPT:
12 Q What is your understanding as to the
13 purpose for this document?
14 A I think it's a checklist for Myra in doing her
15 work.
16 Q Did it relate in any way to her entry of
17 her time records?
18 A She tells me it does, but I don't know how it
19 works.
20 Q Is it your understanding that this is a
21 checklist that she would check off as she completed
22 items?
23 A Or she understood what work she had to do.
24 Q This document by -- on its face relates to
25 RBSG Enterprices, LLC; correct? I don't recall whethe

1 here today that you nor your firm were authorized by
2 Mr. Ghusson to conduct a trademark search for Venustas
3 International, LLC?
4 A I was not authorized.
5 Q I think we covered this earlier. You were
6 the partner in charge of the engagement?
7 A Well, but Sam could have spoken to Myra, could
8 have spoken to Stuart Mickelberg or Rachel directly. I
9 don't think he ever dealt with Rachel.
10 Q There was nothing in the file indicating a
11 trade search had been done?
12 A No.
13 Q There was certainly no bill provided to
14 the client for such work?
15 A No.
16 Q Is there any doubt in your mind that you
17 discussed the quote that Miss Gibson prepared for doing
18 a trademark search with Mr. Ghusson?
19 A No. Because I after saw that, I recalled that.
20 Q And he never authorized you to perform
21 that work?
22 A No.
23 Q Now, turning to Exhibit 12 which is a copy
24 of the engagement letter, the document or the exhibit
25 appears to be two separate documents, if you will, the

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1 this was asked before. If it was, I apologize. But are
2 you aware or is there a document in the file that
3 relates to the Venustas International, LLC?
4 A I don't know.
5 Q Who would know that?
6 MR. REILLY: Counsel, I can represent I
7 went through the file and there is no such
8 document. I think Attorney Shepherd has said
9 the same thing.
10 BY MR. HEPPT:
11 Q Okay. Are you familiar with the way in
12 which Miss Gibson used this document?
13 A No.
14 Q Can you testify today why Miss Gibson did
15 not check off client confirmation regarding no trademar
16 work?
17 A No.
18 Q Okay. Is there any doubt in your mind
19 sitting here today that you discussed the advisability
20 of conducting a trademark search with Mr. Ghusson
21 regarding Venustas International, LLC?
22 A No.
23 Q Is there any doubt in your mind sitting
24 here today that Mrs. Ghusson -- strike that.
25 Is there any doubt in your mind sitting

1 first being a letter from yourself to Mr. Ghusson and
2 Miss Bums-McNeil bearing the bates number 1002, and
3 that is the first page of the exhibit. The second
4 document, if you will, would be the balance of the
5 exhibit. Is that a fair characterization?
6 A Yes.
7 Q And what would constitute the engagement
8 letter?
9 A Well, it's the totality of this, but it's the
10 signed last page which is bates stamped 1005.
11 Q Okay. So, it's the entire document. You
12 would consider this to be the engagement letter?
13 A Yes.
14 Q Okay. And you forwarded this document to
15 Mr. Ghusson; correct?
16 A Yes, and to Mrs. McNeil.
17 Q They each in turn signed it as you
18 indicated on the last page; correct?
19 A To the best of my knowledge. I didn't see it,
20 but yes.
21 Q Did either of those individuals contact
22 you with any questions before they signed it?
23 A I don't remember.
24 Q Okay. The first page, the last paragraph
25 it says, "Please call me directly," and gives your phone

21 (Pages 78 to 81)

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1 number, "if you have any questions". Do you see that?
 2 A Yes.
 3 Q But you don't remember whether either of
 4 them called with any questions before they signed?
 5 A I don't remember talking to Mrs. McNeil other
 6 than maybe a conference call. I don't remember Sam
 7 calling me to ask me.
 8 Q Do you remember whether you discussed this
 9 document with either Miss McNeil or Mr. Ghusson before
 10 they signed it?
 11 A I don't remember.
 12 Q Okay. Who prepared this document?
 13 A This was prepared by Jean Krumm.
 14 Q And did Miss Krumm prepare it under your
 15 supervision?
 16 A Yes.
 17 Q You reviewed the document before it went
 18 out?
 19 A Yes.
 20 Q You understood what it meant when it went
 21 out?
 22 A Yes.
 23 Q On page two, the section entitled LLC, the
 24 first -- it seemed to be a list of items underneath the
 25 introductory paragraph of that section, the first item

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1 being name availability search. Do you see that?
 2 A Yes.
 3 Q You understood what that meant; correct?
 4 A New Jersey only.
 5 Q Was there any doubt -- is there any doubt
 6 in your mind Mr. Ghusson understood that to be the case
 7 as well?
 8 A I mean that's all we were doing. I can't tell
 9 you what he was thinking.
 10 Q Okay. Did you have an understanding as to
 11 the reasons for the formation of the LLC? Did
 12 Mr. Ghusson communicate to you his reasons for wanting
 13 to form the LLC at that time?
 14 A He and his partner wanted to have a partnership
 15 actually with the limited liability protection of New
 16 Jersey LLC law so they could operate a business.
 17 Q During that discussion, would that have
 18 been the time when you first discussed trademark
 19 searches with Mr. Ghusson?
 20 A In general.
 21 MR. SHEPHERD: Objection.
 22 THE WITNESS: We talked --
 23 MR. SHEPHERD: Go ahead.
 24 THE WITNESS: -- in general. Again, in
 25 forming these types of entities, that's a

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1 general discussion I have. It could have been
 2 an LLC. It could have been a corporation. You
 3 could have an S corporation. We should talk to
 4 your accountant about these things. If you're
 5 going to do something down the road that's
 6 going to be in converse, you need some
 7 protection. I don't think it went on any
 8 further than that, the initial discussion.
 9 BY MR. HEPPT:
 10 Q Okay. But I think you testified at the
 11 time that Mr. Ghusson signed the engagement letter and
 12 retained you and your firm to form the LLC they didn't
 13 -- Mr. Ghusson wasn't even sure they could reach an
 14 agreement, he and his partner could reach an agreement
 15 with respect to the business?
 16 MR. SHEPHERD: Object to the form. Sorry
 17 to step on it.
 18 THE WITNESS: That's true.
 19 MR. HEPPT: Okay. That's all I have.
 20 MR. REILLY: Before you go off the record
 21 -- off the record.
 22 (Whereupon a discussion was held off the
 23 record.)
 24 MR. REILLY: Counsel, you've asked for
 25 copies of all documents regarding the formation

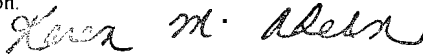
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1 of corporations of any name. I have to go
 2 through this. Is this something that you want
 3 us to sit and do now or can I just make the
 4 copies and send it to you?
 5 MR. HEPPT: I think we indicated or
 6 discussed off the record it would be fine with
 7 me if you just made the copies and send them
 8 along to me with a cover letter indicating that
 9 they came from the file as maintained by the
 10 firm.
 11 MR. REILLY: Okay.
 12
 13 (Whereupon the deposition was adjourned.)

22 (Pages 82 to 85)

1 UNITED STATES DISTRICT COURT
 2 FOR THE SOUTHERN DISTRICT OF NEW YORK
 3 CIVIL ACTION NO. 1:07-04530 (LTS)
 4 AEDES DE VENUSTAS, INC.,
 Plaintiff,
 5 -vs- CERTIFICATE
 VENUSTAS INTERNATIONAL, LLC,
 Defendant.

6
 7 I, KAREN M. AHERN, the officer before whom the
 8 foregoing deposition was taken, do hereby certify that
 9 the witness whose testimony appears in the foregoing
 10 deposition was duly sworn by me, and that said
 11 deposition is a true record of the testimony given by
 12 said witness; that I am neither attorney nor counsel for
 13 nor related to or employed by any of the parties to the
 14 action in which the deposition was taken; and further
 15 that I am not a relative or employee of any attorney or
 16 counsel employed by the parties or financially
 17 interested in the action.

18 

19
 20
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22 DATED: March 29, 2008 NOTARY J.D. NO. 2084523

23
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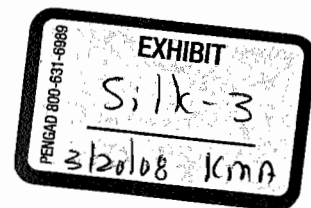
EXHIBIT B
TO THE DECLARATION
OF JOSEPH M. HEPPT

Allen Silk - ghussan

Page 1

From: Myra Gibson
To: Silk, Allen
Date: Fri, Mar 17, 2006 5:15 PM
Subject: ghussan

Allen, the name Venustas International is available. I'm attaching a quote for trademark work, based on my rate and Rachel's Rate. I don't know where to fit you in so you can play around with it if you want.



000000054

	A	B	C	D
1	Trademark Search & Registration Fee Estimate			
2	Quote for 1 trademark			
3				
4				
5		No. of	Cost	
6		<u>Searches</u>	<u>Per Search</u>	<u>Total</u>
7	Knock-out Search	1	\$125	\$125
8	TM Search (standard turn-around=3 business days)	1	\$513	\$513
9				
10		<u>Hours</u>	<u>Rate</u>	<u>Total</u>
11	Paralegal Review of Searches	2	\$125	\$250
12	Paralegal Preparation of Opinion Letter	2	\$125	\$250
13	Attorney Review and Completion of Opinion Letter	1.5	\$325	\$488
14				
15	Review & Letter	5.5		\$988
16				
17	Total Searches, Review & Letter			\$1,626
18				
19	Paralegal Preparation of 1 TM Application	1.5	\$125	\$188
20				
21				
22		<u>Class</u>	<u>Fee</u>	<u>Total</u>
23	USPTO Filing Fees (one class)			
24				
25	Words only	1	\$325	\$325
26				
27	Total Filing Fees			\$325
28				
29	Total for 1 Trademarks			\$2,138
30				
31				
32				
33		<u>Est. Per Mark</u>		<u>Total</u>
34	Follow-up with USPTO	\$ 500	\$1,000	
35	Preparation of ITU App		\$125	
36	ITU Filing Fee		\$150	
37				
38	Follow-up Fees	1		
39		\$775	\$1,275	
40				
41	Total Cost Estimate	\$2,913	\$3,413	
42				
43				
44				

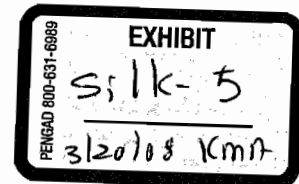
6/19/2007

000000055

EXHIBIT C
TO THE DECLARATION
OF JOSEPH M. HEPPT

STARK & STARK
A Professional Corporation
Attorneys at Law
993 Lenox Drive
Lawrenceville, New Jersey 08648
April 19, 2006

In Account With:
Sam Ghusson and Robin Burns McNeill
56 Fitch Way
Princeton, New Jersey 08540



Re: Formation of LLC - Fixed Fee
Account No. 19655-4

Legal Services:

For Professional Services rendered, including corporate and trademark search for name availability; preparation and filing of Certificate of Formation; preparation and filing of SS4 and Business Registration; and initial drafting of Operating Agreement\$1,500.00

Disbursements:

Secretary of State filing fee; file storage and maintenance.....\$60.00

TOTAL DUE AND OWING STARK & STARK\$1,560.00

Please Note: Stark & Stark reserves the right to request reimbursement in the future of any additional disbursements which are not included on this invoice as a result of this transaction.

000001213

**EXHIBIT D
TO THE DECLARATION
OF JOSEPH M. HEPPT**

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 DOCKET NO. 07 CIV 4530 (LTS) (THK)

4 AEDES DE VENUSTAS, INC.,

5 Plaintiff,

6 vs.

CONFIDENTIAL
DEPOSITION OF:

SAM GHUSSON

7 VENUSTAS INTERNATIONAL, LLC,

8 Defendants.
9 -----

10

11

12

13

14 T R A N S C R I P T of the stenographic notes of
15 the proceedings, taken in the above-entitled matter, by and
16 before SHAUNNA H. MORAN, a Certified Shorthand Reporter,
17 License No. X100213700, Registered Professional Reporter,
18 and Notary Public of the State of New Jersey, held at the
19 offices of MATHEWS, SHEPHERD, McKAY & BRUNEAU, P.A., 29
20 Thanet Road, Princeton, New Jersey, on Tuesday, June 12,
21 2007, commencing at 10:10 a.m.

22

23

24

25

GHUSSON-direct

1 an executive position?

2 A. At Calvin Klein, Elizabeth Arden,
3 Griffin and Victoria Secret Beauty, the last four.

4 Q. Okay. Was Griffin a privately held
5 or publicly held company?

6 A. It was owned by the Limited.

7 Q. Okay. During your career in the
8 beauty industry did you have occasion to deal with
9 trademark issues?

10 A. Yes.

11 Q. Okay. Would it be fair to say that
12 trademark issues are a big part of the beauty
13 industry?

14 A. I would say it is part of it.

15 Q. It's an important -- it's an
16 important issue, especially in product development;
17 isn't that true?

18 A. In product name, correct.

19 Q. And have you had occasion personally
20 to -- to deal with any trademark issues during the
21 course of your career in the beauty industry?

22 A. Not personally, but my team did.

23 Q. Okay. And have you worked with
24 attorneys, outside counsel or inside counsel, on
25 trademark issues from time to time?

GHUSSON-direct

1 A. Yes.

2 Q. Okay. Are you familiar with a
3 publication called Women's Wear Daily?

4 A. Yes.

5 Q. Do you read that publication?

6 A. Yes.

7 Q. Do you read it with any -- any sort
8 of regularity?

9 A. Yes.

10 Q. Okay. Would it be fair to say that
11 you read it on a daily basis?

12 A. Yes.

13 Q. Okay. When you read Women's Wear
14 Daily do you read the entire issue cover to cover?

15 A. No.

16 Q. Okay. Can you explain. Do you have
17 a practice of how you read that publication?

18 A. Yes, I do. I receive it on line, I
19 click on the retail end to see what interesting
20 retail is going on. Then I click on the beauty
21 section and see if anything interesting in the
22 beauty.

23 Q. Okay. What would -- what would, in
24 your mind, constitute an interesting article in the
25 beauty section?

**EXHIBIT E
TO THE DECLARATION
OF JOSEPH M. HEPPT**

JOSEPH M. HEPPT
ATTORNEY AT LAW
521 FIFTH AVENUE
SUITE 1805
NEW YORK, NEW YORK 10175

FACSIMILE: (212) 973-0891

TELEPHONE: (212) 973-0839
EMAIL: JMHEPPT@HEPPTLAW.COM

April 16, 2007

***VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED***

VENUSTAS INTERNATIONAL, LLC
405 Lexington Avenue 25th floor
New York, NY 10174

Re: Aedes de Venustas, Inc. -- Venustas International, LLC – Infringement
Our File No. 0727-008

Dear Sir or Madam:

This firm represents Aedes de Venustas, Inc., which is the owner of U.S. Trademark Registration No. 3082887 for the mark AEDES DE VENUSTAS.

Your company's name constitutes an improper infringement on my client's registered trademark in violation of *United States Code*, Titles 15 and 17, and applicable state laws. Your company's name incorporates our client's trademark and name. Since your use is without permission or consent of the trademark owner, this use is an infringing use of the mark AEDES DE VENUSTAS.

In addition, your improper use of our client's trademark and name creates initial interest confusion as it misleads the consumer as to the source or affiliation. Your use is also a dilution of AEDES DE VENUSTAS, which has become famous in the fragrance and skin care industry through years of advertising and usage by our client.

In view of your infringement of our client's rights, we must demand that you provide written assurances within 7 days that you will immediately:

1. Permanently refrain from any use of the term AEDES DE VENUSTAS or any variation thereof that is likely to cause confusion or dilution;
2. Distribute a press release clarifying that your company is not related to AEDES DE VENUSTAS in any way; and
3. Request that a clarification be published by *Women's Wear Daily* stating that your company is not related to AEDES DE VENUSTAS in any way.

VENUSTAS INTERNATIONAL, LLC

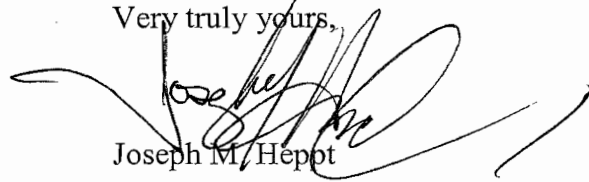
April 16, 2007

Page 2

Be assured, our client intends to take whatever steps are necessary to protect its interests and to enforce its rights, including, without limitation, the commencement of appropriate legal action to enjoin infringing use, to recover monetary damages as well as attorney's fees.

The foregoing is not intended to be an exhaustive recital of the factual and legal bases with respect to this matter. Nothing contained in this letter is intended, nor should it be deemed to constitute, as an admission or a complete statement of the relevant facts or to waive, limit, prejudice or otherwise affect any of our client's rights or remedies, all of which are expressly reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph M. Hépot", is written over the typed name. The signature is stylized with a large, sweeping initial "J" and a long horizontal stroke at the end.

Joseph M. Hépot

JMH/wrk

Copy to: Robert Gerstner

**EXHIBIT F
TO THE DECLARATION
OF JOSEPH M. HEPPT**

77DGAEDH

HEARING

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 AEDES DE VENUSTAS, INC.,

4 **Plaintiff,**

5 v.

07 CV 4530 (LTS)

6 VENUSTAS INTERNATIONAL, LLC,

7 **Defendant.**

8 -----x

New York, N.Y.
July 13, 2007
9:55 a.m.

10 **Before:**

11 HON. LAURA TAYLOR SWAIN,

12 **District Judge**

13 **APPEARANCES**

14 JOSEPH MICHAEL HEPPT
15 **Attorney for Plaintiff**

16 MATHEWS, SHEPHERD, MCKAY & BRUNEAU, P.A.
17 **Attorneys for Defendant**
BY: ROBERT GEORGE SHEPHERD

18 TAYLOR, COLICCHIO & SILVERMAN, LLP
19 **Attorneys for Defendant**
BY: PHILIP M. COLICCHIO

20 ALSO PRESENT: KARL BRADL
21 ROBERT GERSTNER
22 SAM GHUSSON

77DGAEDH

Ghusson - cross

1 International to the lawyers, did you bother to Google the name
2 Venustas International?

3 A. No, sir.

4 Q. And if you had Googled Venustas International, you would
5 have found that there was another company called Aedes De
6 Venustas that was already out there in the beauty industry.
7 Isn't that true?

8 A. I would have found that there was an Aedes De Venustas
9 store that sells perfume product in Christopher Street in the
10 Village, and that's not in the business that I'm In.

11 Q. Wouldn't that indicate to you that there was a potential
12 problem with using the name Venustas International?

13 A. No, sir.

14 Q. It would not have indicated to you in any way that there
15 might have been a problem?

16 A. Absolutely not.

17 Q. And you sent the name Venustas International to your
18 lawyer. Correct?

19 A. Yes, sir.

20 Q. Mr. Allen Silk, I believe you told us?

21 A. Allen Silk from Stark & Stark.

22 Q. And he checked the name out, and he said that it was clear?

23 A. He sent me an invoice that says that he cleared the name
24 for our corporate name as well as a trademark, and you have a
25 copy of that.